

EXHIBIT B



BASF v Cheminova: Motion to Schedule Markman Hearing

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01/04/2011 03:05 PM

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History: This message has been replied to and forwarded.

Counsel:

Happy New Year to all.

Attached is a draft motion to schedule a Markman hearing, and to coordinate the Markmans in the Cheminova and MANA cases. In early November, while negotiating the Markman briefing schedule, plaintiffs agreed not to oppose defendants' motion to coordinate the Markman hearings in the two cases. Accordingly, we've styled this as an unopposed motion, with optional language included if plaintiffs opt to join in the motion; please let us know which way it should read.

We intend to file this in the next day or so, in order to get this scheduling issue on Judge Osteen's radar in advance of the filing of reply briefs on Monday. Please let us know of any issues or concerns.

Thanks,
Bob Burns

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**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

BASF AGRO B.V., ARNHEM (NL),
WÄDENSWIL BRANCH, BAYER S.A.S.,
and MERIAL LIMITED,

Plaintiffs,

v.

CHEMINOVA, INC.

Defendant.

Civ. Action No. 10-CV-274 (WO)(WWD)

**MOTION FOR SCHEDULING OF
CLAIM CONSTRUCTION HEARING**

Defendant Cheminova, Inc. (hereinafter "Cheminova") hereby moves the Court for entry of an Order scheduling a claim construction hearing in this case for as soon after January 10, 2011, as is practicable, as set forth below. [Counsel for Plaintiffs have informed counsel for Cheminova that they do not oppose this Motion.] [Counsel for Plaintiffs have informed counsel for Cheminova that they assent to and join in this Motion.] In support of this Motion, Cheminova states as follows:

1. This lawsuit involves four patents: U.S. Patent Nos. 6,620,943 (the ““943 Patent”) and 6,881,848 (the ““848 Patent”) (collectively, the “Manufacturing Patents”), which cover a particular method for manufacturing the molecule known as fipronil; and U.S. Patent Nos. 6,414,010 (the ““010 Patent”) and 6,835,743 (the ““743 Patent”) (collectively, the “Application Patents”), which cover a particular method for applying fipronil-based products as an insecticide to protect buildings.

2. On December 13, 2010, the parties served and filed their opening claim construction briefs regarding the Manufacturing and Application Patents at issue (Docket Nos. 66-73). The parties' reply briefs on claim construction issues are due to be served and filed on or before January 10, 2011. After that date, all claim construction issues in this case will be fully-briefed and ready for argument.

3. Also pending before this Court is a separate lawsuit commenced by two of the three plaintiffs present in the instant case, BASF Agro B.V., Arnhem (NL), Wadenswil Branch and Bayer S.A.S., against defendants Makhteshim Agan of North America, Inc. and Control Solutions, Inc., Civil Action No. 10-CV-276 (WO)(WWD) (the "*Makhteshim Case*"). While the manufacturing patents at issue in the instant case and in the *Makhteshim Case* differ, the Application Patents at issue in the instant case and in the *Makhteshim Case* are the same.

4. On information and belief, the claim construction briefing schedules in the *Makhteshim Case* and in the instant case are identical: as in the instant case, all claim construction issues in the *Makhteshim Case* on the overlapping Application Patents will be fully-briefed and ready for argument as of January 10, 2011.

5. Both the *Makhteshim Case* and the instant case have been set for trial during this Court's trial term commencing on July 5, 2011.

6. [Cheminova] [The Parties] submit that coordinated hearing and construction of the identical Application Patents at issue in this case and in the *Makhteshim case* would avoid any possibility of inconsistent constructions of the

Application Patents in these two cases, and would maximize efficiency for the Court and the Parties to each case.

7. Accordingly, [Cheminova] [The Parties] respectfully ask this Court to set a coordinated claim construction hearing in the instant case, and in the *Makhteshim* Case, for a date as soon as possible after January 10, 2011, such as will allow time for a decision on the pending claim construction motions in these cases prior to the filing of dispositive motions and sufficiently in advance of final preparations for the July 5, 2011 trials.

8. Counsel for Cheminova has consulted with counsel for Plaintiffs in the instant case, who indicate that they [do not oppose] [assent to and join in] this Motion. Counsel for Cheminova has also consulted with counsel for the defendants in the *Makhteshim* Case, who indicate that they assent to this Motion.

9. Counsel for Cheminova are informed that a similar motion will be filed by the defendants in the *Makhteshim* Case.

WHEREFORE, Defendant Cheminova Inc. moves this Court to set a coordinated claim construction hearing in the instant case, and in the *Makhteshim* Case, for a date as soon as possible after January 10, 2011.

Respectfully submitted this ____th day of January, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of January, 2011, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

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